

Department of Community Development

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To: Planning Commission May 10, 2012

From: Evan Maxim, Senior Planner

RE: Staff Recommendation Memo #3 (Revised June 14, 2012):

Wetlands, Wetland Management Areas, Lake Management Areas - ECA Regulations

The following memorandum was presented to the planning commission on May 17, 2012 as part of their deliberation. Following review, the planning commission provided direction related to each potential code revision. In this revision, the planning commission direction is listed at the end of each item in *italicized text*.

Background:

This memorandum is intended to provide the Planning Commission with a staff summary of policy choices for amendments to the existing Environmentally Critical Areas regulations based upon the Best Available Science by A) clearly identifying recommended changes to the city code for Wetlands, Wetland Management Areas, and Lake Management Areas, and B) providing the basis for the recommendation.

Other amendments have also been identified in this memorandum for the Planning Commission's consideration, in particular the specific recommendations for amendments by the public. These amendments are identified separately for the Planning Commission's consideration.

Please recall that the Planning Commission will consider whether to <u>advance the identified amendments to the next</u>

<u>Planning Commission review and provide further direction</u> to staff as necessary. Staff will incorporate the further direction into the proposed code amendments for public review and Planning Commission action later in the schedule.

Summary: Please note that the numbering within this document will correspond to the numbering assigned to the proposed amendments contained in the forthcoming and attached draft code amendments. Draft code language has not yet been prepared for the proposed amendments below, but will be prepared based on direction provided on May 17th.

<u>Consultant Report Wetland / Wetland Management Area overlay recommendations</u>. The staff has identified the following amendments to the Environmentally Critical Areas Regulations based upon the Best Available Science Report provided by the city's consultant:

Adopt the latest federal delineation manual and its supplemental documents, these should be used to delineate and categorize wetlands. In 2010, the USACE developed a series of regional supplements, which includes the Puget Sound Area. To maintain consistency between the state and federal approaches to wetland identification and boundary delineation, Ecology repealed WAC 173-22-080 (the Washington State Wetland Identification and Delineation Manual, 1997), and adopted a revision of WAC 173-22-035, which provides that wetland identification and boundary delineations should follow the currently approved federal manual and applicable supplement.

Staff Comment: Staff recommends *advancing* this recommendation to July. **PC Direction:** *Advance this proposed amendment.*

3-2. <u>Specify that Critical Areas studies must include the area out to 215-feet beyond the project area boundary.</u> If site access cannot be granted, investigation may be limited to available information and aerial photographs. To determine the existence and provide protection for buffers and adjacent wetlands, the study area should include the widest buffer width.

Staff comment: Staff recommends *not advancing* this recommendation to July. The ECA regulations currently provide flexibility for the staff to exercise judgment in evaluating possible impacts as follows: "The applicant shall disclose to the City the presence of critical areas on the development proposal site and <u>any mapped or identifiable critical</u> areas within <u>the distance equal to the largest potential required buffer</u> applicable to the development proposal area on the applicant's property (SMC 21A.50.100(1)), <u>emphasis</u> added." Specifying a distance may lead to unnecessary expenditures and studies.

PC Direction: Provide additional information regarding this proposed amendment. Staff should evaluate whether or not there is an alternative approach that would ensure appropriate identification of regulated buffers but provide additional flexibility.

3-3. Provide for a fee-in-lieu mitigation program for wetland impacts. The ECA regulations currently do not allow for fee-in-lieu mitigation except in circumstances where a Reasonable Use Exception or Public Agency / Utility Exception are approved. The consultant has suggested that a fee-in-lieu program should be adopted by the city for wetland mitigation.

Staff comment: Staff recommends *advancing* this recommendation to July. Very similar provisions were discussed May 3rd for stream mitigation. Further it appears that there are available options for a wetland fee-in-lieu program in the WRIA 8 watershed.

PC Direction: Advance this proposed amendment. Evaluate functionality of program, including administration and costs. Evaluate a fee-in-lieu program in-City and in the watershed with a preference for in-City (two versions of code amendment, one with a preference, one without).

3-4. Revise buffer width requirements to include evaluations of proposed land use intensity and existing buffer function and condition. Buffer widths would be increased or decreased based upon the proposed land use intensity (e.g. development) and the existing functions of the wetland buffer (e.g. water quality, habitat, etc). Proposed regulations would be similar to the approach the City of Redmond takes to address these issues in their regulations.

Staff comment: Staff recommends *advancing* this recommendation to July. Staff will need to create scenarios to illustrate this option further for the Planning Commission (e.g. high value buffer + high intensity development = slightly bigger buffer, high value buffer + low intensity development = slightly smaller buffer, etc).

PC Direction: Advance this proposed amendment. Provide a definition of "intensity" and address existing improvements as applied to this regulation.

3-5. Provide additional guidance for mitigation impacts to wetland buffers. Sammamish does not currently provide for wetland buffer mitigation ratios (e.g. replacing wetland buffer at a minimum 1:1 ratio). Mitigation ratios would be revised to be specific to the type or category of wetland impacted, the type of mitigation offered, and whether the impacts are considered temporary or permanent in character.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment. Provide an example for PC review.

3-6. Revise mitigation ratios in the code to be dependent on the kind of mitigation proposed (creation, enhancement, preservation, etc.). The code currently allows some flexibility on mitigation ratios based upon timing, impact type, mitigation type, and likelihood of mitigation success. The proposed amendments could increase predictability, complexity, and improve successful mitigation outcomes.

Staff comment: Staff recommends *advancing* this recommendation to July. Staff need to evaluate the practical application of this approach and will investigate this further as part of the eventual recommendation to the Planning Commission.

PC Direction: Advance this proposed amendment. Evaluate a combination of wetland banking and fee-in-lieu mitigation. Use Redmond regulations as an example.

3-7. Provide additional guidance (both allowances and limitations) concerning small isolated wetlands. Where existing isolated wetlands occur and the city is considering proposed alterations, a review should be conducted to identify the functions that the wetland provides to determine how the isolated wetland should be managed for ecological function of the watershed as a whole. A review/justification of wetland functions for small, isolated wetland by a qualified professional would be required.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment. Provide a definition of for "small" wetlands.

3-8. Provide justification for excluding the Sammamish Town Center Area from the impervious surface and vegetation standards in the wetland management area. There is no Best Available Science basis for excluding the Town Center from the vegetation standards in the wetland management area.

Staff comment: Staff recommends *not advancing* this recommendation to July. The Town Center Plan was adopted in June of 2008 and the development regulations were adopted in late 2010. At that time, the policy choice was made regarding exclusion of the Town Center from the wetland management requirements. The Town Center is conceptually intended to be an area of higher intensity residential and commercial growth. Requiring vegetation retention or limiting impervious surfaces based upon the East Sammamish Basin and Nonpoint Action plan would limit development potential in large areas of the Town Center. The city also adopted higher stormwater management requirements and other techniques to reduce impacts from Town Center development. The BAS report prepared by the consultant does not contain any information that would prompt a re-evaluation of the policy choice recently made by the City Council.

PC Direction: Provide additional information for Planning Commission review. Provide original basis for exempting the Town Center. Evaluate whether or not the waiver will shift mitigation burden onto other properties. Identify policy choice for subsequent evaluation by City Council.

3-9. Improve wildlife habitat connectivity for wetlands within the Wetland Management Area overlay district (to prevent habitat fragmentation). The Wetland Management Area overlay intentionally contains high-value wetland features that, in particular, provide high habitat functions. Providing wildlife habitat connectivity between these features would be appropriate as part of the city's fish and wildlife habitat conservation area regulatory protection strategy.

Staff comment: Staff recommends *advancing* this recommendation to July as part of the wildlife habitat corridors code amendments for Fish and Wildlife Habitat Conservation Areas.

PC Direction: Advance this proposed amendment. Evaluate whether or not backyard habitat area certification can be incorporated into this section.

- 3-10. Consider wetland buffer reduction options in combination with preserving / maintaining wetland and buffer functions. The consultant recommended evaluating this potential buffer reduction option in some circumstances when enhancement of the existing wetland buffer vegetation would demonstratively improve water quality and habitat functions and the following conditions are present:
 - a. An undisturbed vegetated corridor (100-ft wide) is preserved;
 - b. Existing buffer conditions are degraded such that more than 40 percent of the buffer is covered by non-native/invasive plant species;
 - c. Tree or shrub vegetation covers less than 25 percent of the total buffer area; or,
 - d. The wetland buffer has slopes of less than 25 percent.

This approach is similar to the approach used by Issaquah and Redmond, and would require case-by-case evaluation of the site.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment. Evaluate the "negative incentive" this amendment may create (i.e. encouraging degradation of the wetland / buffer).

3-11. Conduct one or more focused basin-level planning studies to evaluate existing functions and likely future development patterns. The goal is to develop a basin-specific prioritized list of watershed functional needs (e.g., flood storage, habitat corridors, etc.), and identify potential locations where such functions could be (re)established or preserved.

Staff comment: The proposal would not result in immediate amendments to the ECA regulations. Staff recommends that the Planning Commission include this in their list of recommendations to the City Council as a separate "follow up" item.

PC Direction: Include this in their list of recommendations to the City Council as a separate "follow up" item.

<u>Consultant Report Lake Management Area recommendations</u>. The staff has identified the following amendments to the Environmentally Critical Areas Regulations based upon the Best Available Science Report provided by the city's consultant:

3-12. Introduce thresholds to trigger stormwater treatment for redeveloped sites and pervious pollutant generating areas. The code currently requires stormwater treatment if new pollution generating impervious surface is proposed as part of a project. The proposed amendments would add additional thresholds to require stormwater treatment on re-developing properties.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment. Provide additional information related to pervious pollutant generating surfaces. Evaluate possible drainfield upgrades. Provide information related to the source of phosphorous.

3-13. Allowing stormwater treatment technologies that have been tested using Ecology's TAPE protocol and given a General Use Level designation to be incorporated into stormwater treatment systems in the Lake Management Areas. The code currently allows for alternative technologies to be used for total phosphorous removal, provided such technology can be demonstrated. The proposed amendments would clarify possible methods for demonstrating the usefulness of alternative technologies.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment.

3-14. Reference the King County or Ecology manual procedures to size, analyze, and design stormwater treatment BMPs for phosphorus reduction. Eliminate the specific list of methods for removing total phosphorous from stormwater and instead reference the King County or Ecology manual procedures to size, analyze, and design stormwater treatment BMPs for phosphorus reduction. Require engineering design computations to demonstrate how the 80% phosphorus reduction level will be achieved for each development and redevelopment project site exceeding water quality treatment thresholds.

Staff comment: Staff recommends *advancing* this recommendation to July in a modified form. Site specific analysis can be costly and time consuming. The proposed modification would be to allow some flexibility on the part of staff in requiring site specific analysis for small site projects; instead of the site specific analysis, allowing use of prescriptive standards.

PC Direction: Advance this proposed amendment.

3-15. <u>Create source-control BMPs provisions.</u> The proposed amendments would focus on creating additional controls on sources of water quality issues in Beaver and Pine Lake (e.g. prohibiting the use of phosphorous fertilizers, requiring the proper disposal of pet waste, etc). The city currently limits the use of phosphorous fertilizers (not through the ECA regulations) and requires proper pet waste disposal; the proposed amendments would clarify these requirements as part of the ECA regulations.

Staff comment: Staff recommends *advancing* this recommendation to July. However staff is interested in further evaluating the practical application of these regulations.

PC Direction: Advance this proposed amendment.

3-16. Beaver Lake phosphorous modeling work should include an evaluation of the impacts of various stormwater treatment performance goals for reducing phosphorus loading to the lake. Specifically, whether the target of 80% phosphorus reduction in stormwater discharges for new development and redevelopment yields improved lake health when compared to the 50% phosphorus reduction target consistent with the standard used by King County and Ecology.

Staff comment: The proposal would not result in immediate amendments to the ECA regulations. Staff recommends that the Planning Commission include this in their list of recommendations to the City Council as a separate "follow up" item.

PC Direction: Include this in their list of recommendations to the City Council as a separate "follow up" item.

<u>Public Comment recommendations</u>. The staff has identified the following amendments to the Environmentally Critical Areas Regulations based upon public comment for the Planning Commission to consider advancing to July:

- 3-17. Property owners should have the option to tailor wetland buffers to existing property improvements (public comment #5 & 73). Currently buffers are established from the edge of a wetland, and the size of the buffer is based on the type of wetland feature. Buffers should be based upon site conditions surrounding the wetland rather than a one-size-fits-all approach. Human-made improvements that constitute a de facto barrier to influence should define the barrier of the wetland buffer (e.g. a house in the buffer should represent the edge of the buffer).
- 3-18. <u>Distinguish between developed and un-developed land when establishing wetland buffers (public comment #5 & 73)</u>. Provide for reduced wetland buffers in developed areas where human created improvements are currently located within a buffer, as opposed to un-developed areas where new development proposals are under consideration.

Staff comment (3-17 & 3-18): These items are very similar to the stream items (2-10 and 2-11) evaluated and advanced by the Planning Commission on May 3rd. Staff recommends *advancing* this amendment for additional consideration in July. Adopting this option may provide additional tools for permit review and may also result in additional expense and review complexity for the applicant. Additional staff analysis and research will be conducted on the following:

- a. How a "tailored" or site-specific buffer approach would be supported by Best Available Science,
- b. Ease of use for city and applicants

- c. How to ensure consistency between applications and over time, and adequate record keeping.
- d. Identifying the policy basis for the amendment.

PC Direction: Advance this proposed amendment.

3-19. Increase the wetland exemption threshold from 1,000 to 4,000 square feet (public comment #33, 67-70, 84, 85, 88, 101, & 105). The city has received a number of comments related to an increase in the wetland - limited exemption threshold. The code currently allows for the filling / alteration of hydrologically isolated wetlands of less than 1,000 square feet. The BAS report prepared by the city's consultant has indicated that the peer jurisdictions evaluated as part of their review, provide similar exemptions that range from 250 to 2,500 square feet for isolated wetlands. The Department of Ecology has noted that the city may wish to consider provisions for isolated wetlands between 1,000 and 4,000 square feet.

Staff comment: The staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment. Evaluate effect of this amendment when combined with item 3-7. Provide additional rationale as to "why" this amendment should be advanced. Evaluate this option in combination with authorization for wetland banking and wetland fee-in-lieu approaches.

3-20. Consolidate wetland definitions (public comment #75). The city currently has several definitions of wetland within the Sammamish Municipal Code. To some extent these definitions are based upon the focus of the regulations. Consolidating wetland definitions to the maximum extent feasible would improve clarity and consistency.

Staff comment: Staff recommends *advancing* this recommendation to July.

PC Direction: Advance this proposed amendment.

3-21. Increase the allowance for wetlands to be used for stormwater management purposes. The city currently allows isolated Category IV wetlands to be used for stormwater management. The proposed amendment would evaluate increasing the types of wetlands to include low function Category III and IV wetlands, if mitigation is also provided.

Staff comment: Staff recommends *advancing* this amendment for additional consideration in July. Adopting this option may provide additional tools for permit review and may also result in additional expense for the applicant. Additional staff analysis and research will be conducted on the following:

- a. How the proposed amendment would be supported by Best Available Science,
- b. Ease of use for city and applicants
- c. How to ensure consistency between applications and over time, and adequate record keeping.
- d. Identifying the policy basis for the amendment.

PC Direction: Advance this proposed amendment. Evaluate the cumulative impacts to wetlands of this approach. Identify if this is a needed amendment.